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May 29, 2003

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BY HAND DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
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MAY 29 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: EX PARTE COMMUNICATION
Definition of Radio Markets
MB Docket No. 02-277; MM Docket Nos. 01-235, 01-317 and 00-244

Dear Ms. Dortch:

In a paper dated May 8, 2003 and submitted for the record in this proceeding, Bear Stearns proposed the creation of a new "top ownership tier" of large radio markets, in which common ownership of up to ten radio stations would be permitted. In an *ex parte* letter dated May 15, 2003, Viacom supported this concept and advocated the creation of a new tier allowing ownership of up to ten stations in markets with at least 60 stations. This proposal has since also received support from Congressman W.J. "Billy" Tauzin, Chairman of the Committee on Energy and Commerce, U.S. House of Representatives, in a May 23, 2003 letter to the Chairman.

As is discussed in its comments and reply comments in this proceeding, Clear Channel Communications, Inc. ("Clear Channel") continues to believe that the record is devoid of any empirical evidence to sustain the retention of local radio ownership limits. Nonetheless, if the Commission is resolved to retain limits in any form, Clear Channel likewise supports the creation of a new tier of large markets in which up to ten radio stations may be commonly owned.

The Commission is apparently considering changes to its local radio market definition to address anomalies that it believes allow certain small markets to be treated as larger markets for purposes of applying the rules. Any such changes, if adopted, would by definition be *more* restrictive of common radio ownership and would therefore contravene the *deregulatory* presumption of Section 202(h) of the Telecommunications Act of 1996 (the "1996 Act"). As Congressman Tauzin noted in his May 23, 2003, letter, if the Commission is resolved to address perceived anomalies in defining small radio markets, it must also—as a statutory necessity—address the anomaly of considering radio markets with 60, 75, 100 and more

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stations the same as 45-station markets for purposes of applying ownership limits. Accordingly, any revision of the local radio ownership rule should include a provision allowing common ownership of up to ten radio stations (up to at least seven in one service)¹ in markets with 60 or more stations.

The addition of such a tier hardly would represent a radical move. It would allow ownership of, at most, 17% of a market's radio stations (i.e., the maximum ten stations out of 60, the minimum number of total market stations to qualify for the tier). This 17% is comparable to or less than the percentage of stations that the present rules allow: a party can own up to 50% of the stations in markets with 15 or fewer stations, up to 40% of the stations in markets with 15-29 stations, up to 23% of stations in markets with 30-44 stations, and up to 18% of stations in markets with at least 45 stations. In the largest markets, moreover, the permissible common ownership would be far smaller in percentage terms than the maximum possible 17%. For instance, in San Francisco, which has 105 total radio stations under the proposed Bear Stearns counting methodology, ownership of ten radio stations amounts to just 9.5% of the stations in the market. In Chicago, the percentage would be 7.9% (ten out of 127), and in New York it would be a mere 6.8% (ten out of 147).

The addition of a large-market ownership tier would result in an ownership rule that is more balanced and reflective of competition across radio markets. If the Commission believes it has the statutory authority to revise the rule to reflect greater competition and diversity concerns in small markets, then real-world considerations and the mandates of the 1996 Act not only authorize it, but require it, also to adjust the rule to account for the huge number of diverse and competing stations in large markets. Any adjustment of the rule to address small markets, without a concomitant adjustment for large markets, would be inconsistent with the deregulatory mandate of the 1996 Act.² In the event any local radio ownership limits are retained, therefore, Clear Channel supports the adoption of an additional tier of large markets (with 60 or more radio stations) in which ownership of up to ten radio stations would be permitted.

¹ In its May 15, 2003, letter, Viacom persuasively argues that separate ownership caps for single services (AM and FM) should be eliminated. Clear Channel supports this view.

² Addition of an additional large-market radio ownership tier would be entirely consistent with the changes the Commission is apparently considering to the local television duopoly rule, which would reportedly allow common ownership of three television stations in certain major markets.

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Very truly yours,

A handwritten signature in black ink, appearing to read "Richard J. Bodorff", written over the typed name.

Richard J. Bodorff
Gregory L. Masters

Counsel for Clear Channel Communications, Inc.

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